IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated:- 12.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
And
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.158 of 2006

Pushbaraj … Petitioner

Vs.

1. The State of Tamil Nadu
represented by the Secretary to the Government,
Prohibition and Excise Dept.,
Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai, Tamilnadu.

3. The Superintendent of Central
Prison, Central Prison,
Chennai-600 003. … Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records relating to the detention order in Memo No.22/B.D.F.G.I.S.V./2006 dated 23.01.2006, passed by the second respondent herein, quash the same, direct the respondent to produce the body of the person of the detenu namely Pushbaraj, son of Nagappan, before the Court, now detained under Section (1) 3 of the TPDA Act 14 of 1982 in the Central Prison, Chennai.

For Petitioner : Mr. S.Palanikumar
For Respondents : Mr. M.Babu Muthu Meeran,
Addl. Public Prosecutor.

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner herein challenges the impugned order of detention, dated 23.01.2006, detaining him as 'Bootlegger' as contemplated under the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the requisition, dated 02.01.2006, made by the Inspector of Police, Manali Police Station, Chennai, to the Judicial Magistrate, Thiruvotriyur, Chennai, and the report of the Forensic Laboratory, Chepauk, Chennai-5, dated 10.01.2006, contended that in view of variation in the quantity of the contraband and in the absence of any explanation by the officer concerned, the ultimate detention order is liable to be quashed.

4. In the light of the said contention, we verified the requisition dated 02.01.2006. In the said requisition, the Sponsoring Authority, viz., Inspector of Police, M-6 Manali Police Station, Chennai-68, has specifically stated that the quantity taken for chemical examination in two bottles is 350 ml. On the other hand, in the report of the Forensic Laboratory, dated 10.01.2006, the quantity sent for chemical examination has been mentioned as 375 ml. Even though there is variation, no explanation has been offered by anyone including the Sponsoring Authority. It is also relevant to note that in the representation, dated 04.02.2006, in the penultimate paragraph, the said aspect was brought to the notice of the authority concerned. However, while considering the said representation, the Government have not chosen to clarify the claim regarding variation and absolutely there is no reference to the same.

5. Learned counsel appearing for the petitioner has brought to our notice a Division Bench decision of this Court, dated 18.10.2004, made in HCP No.898 of 2004. In that case, the Division Bench, after pointing out the discrepancy, viz., 500 ml. in the order of the Detaining Authority and 510 ml. in the chemical analysis report; and after finding that there was no clarification by the Sponsoring Authority; quashed the detention order on the ground of non application of mind on the part of the Detaining Authority. We are of the view that the said decision is directly on the point. Accordingly, we accept the contention raised by the learned counsel for the petitioner. In the absence of any clarification by the Sponsoring Authority, we hold that there is no proper application of mind on the part of the Detaining Authority while passing the detention order.

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6. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2. The Commissioner of Police, Chennai.

3. The Superintendent,
Central Prison, Chennai.
(In duplicate for service on the detenu)

4. The Secretary,
Public (Law & Order) Dept.,
Fort St. George, Chennai-9.

5. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.S.Palanikumar, Advocate, SR.24036.

HCP No.158 of 2006.

MAB(CO)
RVL 20.06.2006

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